



Joint Committee on Transparent Policing & Use of Force Reform
Testimony submitted by Efren Zamudio on behalf of the ACLU of Oregon
September 3, 2020

Co-Chairs Manning and Bynum, and Members of the Committee:

The American Civil Liberties Union of Oregon¹ has long fought to preserve and extend the constitutionally guaranteed rights of people who have historically been denied their rights on the basis of race. We stand with Black leaders and communities in their clarion calls to address and end the violence they endure at the hands of police.

As we continue to come together with a commitment to fundamentally redesign and realign our communities around what public safety means and looks like, the ACLU of Oregon continues to stand with and provide technical expertise and support to those committed to this work.

LC 17

The ACLU of Oregon strongly supports the underlying goal of this bill. Police response to protests and other mass assemblies should not involve militarized displays or mass violence by the government. Law enforcement should never deploy indiscriminate weapons, such as tear gas and stun grenades, on any mass gathering or assembly.

In addition to posing serious risks to people's health and safety, such weapons almost by definition violate our right to due process and will seldom, if ever, constitute the least restrictive means available to regulate unlawful conduct in the context of a protest or mass assembly.

In Oregon, we have seen over three months of nightly demonstrations centered around police killings and brutality against Black people. The public is demanding that their systems of government and government officials act to ensure Black Lives Matter, and to demand real and substantive change. Yet, state and federal law enforcement are curtailing dissent with

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We have more than 30,000 members and supporters in the State of Oregon, and that number is growing as we speak.

disproportionate violence and bias against Black Lives Matter protesters in violation of the First and Fourth Amendments and Article 1 sections 8, 9 and 26 of the Oregon Constitution. And these violations have not been contained in just Portland. The ACLU of Oregon has recently received similar complaints from Salem, Eugene, Springfield, Prineville and Rogue River to name a few.

While the intent of HB 4208 from the special session was to limit the use of tear gas by police severely, it actually codified in statute a pathway for law enforcement to legally use tear gas on protesters based on the alleged actions of a few. We are pleased to see that LC 17 repeals this law and bans the use of tear gas and bans impact munitions, like rubber bullets, being used indiscriminately against crowds for crowd control purposes.

The bill does not limit law enforcement's ability to defend threats to life or personal safety as it continues to allow the use of impact munitions if circumstances make use of force legally justified against *an individual*. This focus on the individual(s), as opposed to crowds, is important to maintain so that, at a minimum, no person is subjected to force without a constitutionally permissible justification. We also appreciate the inclusion of requirements of care for those injured by police force, protections for those caring for injured persons, and disability accommodations when issuing and enforcing orders to disperse.

We were also pleased to see recognition of the need to consider how this statute may be enforced when multiple agencies, including federal agencies, are cooperating in crowd control efforts. We encourage the committee to consider how it might also increase transparency around inter-agency cooperation, including requiring publicly-available inter-agency agreements that have clear shared rules of engagement that do not violate the provisions of LC 17. The committee should also consider other required contents of such agreements, e.g. chain of command, single complaint filing process, etc.

Finally, we are pleased to see the elimination of immunity under the Oregon Tort Claims Act arising out of riot², civil commotion, or mob action. However, it falls short of creating pathways for members of the public to seek adequate civil remedies for the use of tear gas, impact munitions or other state constitutional rights violations. Civil litigants are still limited to bringing tort claims, a set of actions that does not fully encompass all of the state constitutional violations that law enforcement have repeatedly committed.

² The ACLU of Oregon has previously testified that we have concerns that riot remains a felony, and that the threshold for riot is too low. As part of this, we continue to urge the legislature to repeal ORS 131.675 as unconstitutional in part and otherwise superfluous. We also urge work to amend the riot statute.

Oregon's constitution has robust protections in Articles I, sections 8 and 26 for assembly and expressions. The Oregon constitution, Article I, section 13, also prohibits treating arrested and confined persons with "unnecessary rigor." When an individual's *federal* constitutional rights are violated, they can bring a case under 42 U.S.C. 1983. When doing so, they still have to face the often insurmountable hurdle of qualified immunity. There is currently no Oregon statute that provides a pathway to court for *state* constitutional violations. There should be. And that statute should make clear that neither absolute nor qualified immunity is not available to shield law enforcement, including prosecutors and corrections officers, or their private contractors from accountability. Colorado has recently created a similar law³.

LC 18

Generally, we are supportive of this concept. A contributing factor to the militarization of law enforcement is their uniforms; especially when they are doing crowd management during assemblies and protests. During protests in Portland, we have seen officers covering their names and replacing them with numbers that only hold meaning to their employing agency, and working in uniforms that do not always make it clear which law enforcement agency they are employed with.

It is critical to transparency, accountability, and the safety of the public to be able to easily identify the agency and officer(s) engaging members of the public. LC 18 would require uniforms to prominently display the officer's first initial and last name, badge number, or an identifying number, information sufficient to identify their employer. While we prefer that an officer always be required to have their name displayed clearly, we have no inherent opposition to officers clearly displaying a unique number, so long as the number still gives the public the meaningful ability to hold an individual officer accountable for misconduct or other violations of law.

We recommend the following additions to LC 18 to ensure adequate transparency:

- The bill should include a standard that the assigned number is no longer than four digits. This would ensure that DPSST is not assigning numbers to officers that are so long or overly complicated that the average person would not easily remember that number if they were not in a position to take a photo or write the number down in that moment.
- DPSST must keep an easily searchable public database of these numbers and the officers they are assigned to. This is critical to achieving transparency and ensuring the public can

³<https://www.forbes.com/sites/nicksibilla/2020/06/21/colorado-passes-landmark-law-against-qualified-immunity-creates-new-way-to-protect-civil-rights/#443739de378a>

easily identify the officers, and where they are employed, that they are coming into contact with even if officers are using their assigned number instead of their name.

In addition, we appreciate the inclusion of language that requires an officer to provide their name and badge number to a member of the public upon request when performing official duties. And the directive to law enforcement agencies to assist in identifying an officer when a request is made by the member of the public in a substantive and timely manner.

LC 19

We are generally supportive of this concept. Establishing a publicly available database on information about misconduct and discipline of public safety employees is critical to tracking bad actors and increasing transparency to the public. We encourage the committee to also consider how it might track civil complaints against a public safety employee or government entity for torts or constitutional rights violations.

The database LC 19 establishes would be a critical tool the public could use to track misconduct and discipline. It is imperative that we have a statewide database, so we know and can track bad actors and ensure public safety employees are fit to serve the public.

LC 20

We are supportive of this concept. LC 20 appears similar in concept to HB 2355, which directed the Criminal Justice Commission's STOP policy and report⁴. A statewide database of reports of the use of physical force by peace officers and corrections officers and deaths of persons in custody is critical to holding people accountable and for transparency to the public.

The directive for an annual report by Oregon Criminal Justice Commission in LC 20 has the opportunity to provide valuable insights and data on the use of physical and deadly use of force in much the same way that the 2019 STOP report provided valuable insights and data on traffic and pedestrian stops.

LC 20 is a critical step to ensuring that violence, use of force, and death at the hands of police are recorded, archived, and accessible to the public. A report on the analysis of the database will be critical in informing future actions to hold police accountable and reimagine our public safety system.

⁴ <https://www.oregon.gov/cjc/SAC/Pages/stop.aspx>

We also encourage this committee to consider what accountability mechanism could be created should the report reveal jurisdictions that have unlawful use of force patterns or practices. For example, the Attorney General or other body could be authorized to conduct further investigation and issue sanctions.

LC 746

We are supportive of this concept and pleased to see that the concerns we expressed about SB 1604⁵ have been addressed with LC 746, and that LC 746 continues to take accountability and transparency seriously. Issues involving discipline and misconduct are matters of public concern and continue the work to ensure officers are accountable to the public. We urge the committee to also consider adding state corrections officers to this concept. Currently, “law enforcement officer” only includes employees of the Oregon State police or county or municipal police officers. While this definition may create more transparency and accountability for police working in local jails, law enforcement actions in Oregon jails and prisons should not be left out of our efforts to increase accountability and transparency in our justice system.

The ACLU of Oregon looks forward to continued work with this committee. Thank you for the opportunity to provide testimony.

⁵ <https://olis.oregonlegislature.gov/liz/2019I1/Downloads/CommitteeMeetingDocument/224839>